

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Bail Appl..No. 7287 of 2007()

CP.139/2007 of J.M.F.C.-II, NEYYATTINKARA
CRIME NO.67/07 OF POOVAR POLICE STATION
.....

PETITIONER/ACCUSED (A2)

VASANTHA, AGED 37, D/O.THANKAM,
MUTHUKKUPILAVILA VEETIL, PAAMBUKAALA,
ARUMANOOR DESOM, THIRUPURAM VILLAGE.

BY ADV. SRI.R.T.PRADEEP

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRIJAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 03/12/2007, THE COURT ON 04/12/2007 PASSED THE
FOLLOWING:

R. BASANT, J.

B.A.NO. 7287 OF 2007

Dated this the 4th day of December, 2007

ORDER

Application for anticipatory bail. The petitioner – a woman, faces allegations under Sec.436 of the IPC. She is the one who lodged the complaint/informant. She alleged that her brother's house was set fire to. In the course of investigation, it was revealed that the petitioner, along with another brother of hers, was responsible for the fire. Investigation is now complete. Final report has already been filed. Cognizance has been taken. Committal proceedings has been registered. The petitioner has received summons from the court to appear before the court. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is prayed that directions under Sec.438 and/or Sec. 482 of the Cr.P.C. may be

issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of the jurisdiction under Sec.438 of the Cr.P.C. The petitioner may be directed to surrender before the learned Magistrate and seek regular bail, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar** (AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits, in accordance with law

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and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

6. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge